

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 15-1345V

Filed: January 12, 2017

UNPUBLISHED

JOAN WITKOWSKI,

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Petitioner,

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v.

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SECRETARY OF HEALTH
AND HUMAN SERVICES,

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Respondent.

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Damages Decision Based on Proffer;
Influenza Vaccine ("Flu Vaccine");
Shoulder Injury Related to Vaccine
Administration ("SIRVA");
Special Processing Unit ("SPU")

*Franklin John Caldwell, Jr., Maglio, Christopher & Toale, Sarasota, FL, for petitioner.
Ryan Daniel Pyles, U.S. Department of Justice, Washington, DC, for respondent.*

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On November 9, 2015, Joan Witkowski ("petitioner") filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the "Vaccine Act" or "Program"). Petitioner alleges that she suffered right sided bursitis and a focal, partial thickness tear in the posterior supraspinatus tendon at the distal bursal surface caused by the influenza vaccination she received on October 23, 2014. Petition at ¶¶ 1, 5-6. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On November 21, 2016, the undersigned issued a ruling on entitlement, finding petitioner entitled to compensation. (ECF No. 31). On January 12, 2017, respondent filed a proffer on award of compensation ("Proffer") indicating petitioner should be

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

awarded \$75,000.00. Proffer at 1. In the Proffer, respondent represented that petitioner agrees with the proffered award. *Id.* Based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **the undersigned awards petitioner a lump sum payment of \$75,000.00 in the form of a check payable to petitioner, Joan Witkowski.** This amount represents compensation for all damages that would be available under § 300aa-15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Nora Beth Dorsey

Nora Beth Dorsey
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

JOAN WITKOWSKI,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 15-1345V

Chief Special Master Nora Beth Dorsey
ECF

RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

On November 21, 2016, respondent filed an amended Rule 4(c) Report, in which she recommended that the Court find petitioner entitled to compensation, and also on November 21, 2016, the Court entered its Ruling on Entitlement, finding petitioner entitled to compensation. Respondent now proffers that petitioner receive an award of a lump sum of **\$75,000.00** in the form of a check payable to petitioner. This amount represents compensation for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which petitioner is entitled.¹

Petitioner agrees with the proffered award of \$75,000.00.²

Respectfully submitted,

BENJAMIN C. MIZER

Principal Deputy Assistant Attorney General

¹ Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future pain and suffering, and future lost wages.

² This proffer does not include any award for attorneys' fees and costs that may be awarded pursuant to 42 U.S.C. § 300aa-15(e).

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Dated: January 12, 2017